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## **The Politics of Legality and UN Resolution 2334**

*By Sangeetha Yogendran*

### **Synopsis**

*UN Resolution 2334 condemning Israeli settlements was passed by the Security Council only because the US did not exercise its usual veto. As expected, the resolution was strongly opposed by Israel, which threatened to cut its funding to the United Nations. As we face an uncertain global order, it is crucial that countries work within the international system.*

### **Commentary**

UNITED NATIONS Resolution 2334, and the abstention vote by the United States, was a significant exercise in international diplomacy and its relationship with international law. The resolution condemned Israel's illegal but expanding settlement project and demanded that Israel "*immediately and completely cease all settlement activities in the 'occupied' Palestinian territory, including East Jerusalem.*" The resolution was adopted with 14 votes in favour with only the US abstaining.

The passing of the resolution, made possible because of the US' holding back its usual veto demonstrated that the decision to do the right thing through the international system is not necessarily based on the legality of the issue. While international law is clear on the illegality of settlements, this resolution was only adopted because key actors, such as the US, decided it was time to do the right thing. This allowed the Security Council to produce a fair outcome.

### **International Law and Weakness of the UN system**

While the Security Council is perhaps one of the world's most powerful yet imbalanced international institutions, often at the mercy of the veto power of the five

permanent members, this resolution demonstrated an instance where the Council issued a resolution based on merit in international law and nothing more.

International law is a complicated system to say the least, and there are only some issues where the rules are clear or even codified. The issue of illegal settlements is one such. As an occupying power, Israel is obligated under the Fourth Geneva Convention to not forcibly transfer protected persons from the occupied territories to the territory of the occupying power.

It is also unlawful under Article 49 for an occupying power to transfer parts of its own population into the territory it occupies. International humanitarian law therefore prohibits the establishment of settlements, and considers it a form of population transfer into occupied territory.

The Security Council was initially scheduled to vote on a resolution presented by Egypt on behalf of Palestine. However, Egypt pulled back the text of the resolution at the last minute supposedly after Israeli Prime Minister Netanyahu exerted pressure on Egyptian President Abdel Fatah Al-Sisi. He also lobbied US politicians, including president-elect Donald Trump and his team, to veto the resolution. The following day saw a new resolution being introduced to the Security Council on the same subject, authored by New Zealand, Malaysia, Venezuela and Senegal.

Despite settlements clearly being a violation of international law, the US abstention was a surprise to many, and signaled a drastic shift in Washington's long-standing support for Israel. This position is however likely to reverse or even harden under the incoming Trump administration. The reasoning put forward by the US for the abstention vote was not directly connected to the illegality of settlements under international law, but about how the expanding settlement enterprise was becoming a major obstacle to the achievement of a two-State solution and a just, lasting and comprehensive peace.

The process leading up to this resolution, and in many similar circumstances, confirms the dismal reality that perhaps the biggest shortcoming of international law is that its adherence and enforceability depend largely on states' voluntary consent and compliance.

### **Holding the System Hostage**

Immediately following the adoption of the Security Council resolution on Israeli settlement construction, Netanyahu ordered a cut of approximately US\$7.8 million in funding to five UN institutions that he deemed especially hostile to Israel, with more funding cuts to follow. It is ironic that what started as Israel's concerns with the US vote has extended to a reaction against the whole UN system.

Being on the receiving end of an unfavourable UN resolution should not lead countries to threaten to or suspend their contributions to UN bodies. The UN and its use to a country as a member state cannot be premised on always getting favourable outcomes. However, this is not the first instance of a country threatening to boycott the system due to an unfavourable outcome.

A similar trend was seen in late 2016 with states threatening to withdraw from the International Criminal Court (ICC). Burundi, South Africa and the Gambia decided to begin the process of withdrawing from the ICC because the ICC was seen as focusing inordinately and prejudicially on African states. However, Russia and the Philippines have also made statements indicating their intention to withdraw from the Court, even though in Russia's case the Kremlin never ratified the Rome Statute following its signing in 2000.

Certain member states spend more time thinking about how to get out of the international system than on righting the wrongs that would see them on the receiving end of condemnation or potential punitive action to begin with.

It is likely that we will see an increase in states trying to withdraw from international institutions in the coming years, especially if major global players set the pace for others to follow. States should work together to reform the UN system and its institutions to ensure it works for everyone, instead of making threats to boycott or leave the system. After all, it's only fair to expect everyone to play by the rules.

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